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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.810 OF 2001

Mr. T.R. Mehra of Mumbai)
Indian Inhabitant, residing at)
Mehra House, Second Floor, 10/2)
Azad Nagar Co-op. Hsg. Society)
N.S. Road No.1, Vile Parle,)
(West), Mumbai-400 056.)..PETITIONER

Versus

1.The Union of India.)
2.Customs, Excise & Gold)
(Control) Appellate Tribunal)
West Regional Bench, PNB)
House, 3rd DFloor, Fort,)
Mumbai-400 001.)
3.The Commissioner of Customs)
(Import), Mumbai, New)
Customs House, Ballard Estate)
Mumbai-400 038.)
4.The Deputy Commissioner of)
Customs, Central Revenue)
Recovery Cell, New Customs)
House, Ballard Estate,)

Mumbai-400 038

)..Respondents

WITH

WRIT WRIT PETITION NO.811 OF 2001

Obron Impex Pvt. Ltd.)
a Company registered under the)
Companies Act, 1956 having)
registered office at Mehra)
Estate, L.B. S. Marg, Vikroli,)
(West), Mumbai-400 079)..Petitioner

Versus

1.The Union of India.)
2.Customs, Excise & Gold)
(Control) Appellate Tribunal)
West Regional Bench, PNB)
House, 3rd DFloor, Fort,)
Mumbai-400 001.)
3.The Commissioner of Customs)
(Import), Mumbai, New)
Customs House, Ballard Estate)
Mumbai-400 038.)
4.The Deputy Commissioner of)
Customs, Central Revenue)

Recovery Cell, New Customs)
House, Ballard Estate,)
Mumbai-400 038)..Respondents

WITH

WRIT WRIT PETITION NO.812 OF 2001

Mr. Sachin Mehra of Mumbai)
Indian Inhabitant, residing at)
Mehra House, First Floor, 10/2)
Azad Nagar Co-op, . Hsg. Society)
Ltd., N.S. Road No, .1, Vile)
Parle (West), Mumbai-400 056.)..Petitioner

Versus

1.The Union of India.)
2.Customs, Excise & Gold)
(Control) Appellate Tribunal)
West Regional Bench, PNB)
House, 3rd DFloor, Fort,)
Mumbai-400 001.)
3.The Commissioner of Customs)
(Import), Mumbaui, New)
Customs House, Ballard Estate)
Mumbai-400 038.)

4.The Deputy Commissioner of)
Customs, Central Revenue)
Recovery Cell, New Customs)
House, Ballard Estate,)
Mumbai-400 038)..Respondents

WITH

WRIT WRIT PETITION NO.813 OF 2001

L.D. Textile Industries Ltd.)
a Company registered under the)
Companies Act, 1956 having)
registered office at 127, Rohal)
Kutir, Gul Mohar Cross Road)
No.10, JVPD Scheme, Mumbai-)
400 049.)..Petitioenr

Versus

1.The Union of India.)
2.Customs, Excise & Gold)
(Control) Appellate Tribunal)
West Regional Bench, PNB)
House, 3rd DFloor, Fort,)
Mumbai-400 001.)
3.The Commissioner of Customs)

(Import), Mumbai, New)
Customs House, Ballard Estate)
Mumbai-400 038.)
4.The Deputy Commissioner of)
Customs, Central Revenue)
Recovery Cell, New Customs)
House, Ballard Estate,)
Mumbai-400 038)..Respondents

WITH

WRIT WRIT PETITION NO.814 OF 2001

Mr. V.K.Mehra of Mumbai)
Indian Inhabitant, residing at)
Mehra House, Second Floor, 10/2)
Azad Nagar Co-op. Hsg. Society)
N.S. Road No.1, Vile Parle,)
(West), Mumbai-400 079 through)
his constituted Attorney Mr.)
Sachin Mehra)..PETITIONER

Versus

1.The Union of India.)
2.Customs, Excise & Gold)
(Control) Appellate Tribunal)

West Regional Bench, PNB)
House, 3rd DFloor, Fort,)
Mumbai-400 001.)
3.The Commissioner of Customs)
(Import), Mumbau, New)
Customs House, Ballard Estate)
Mumbai-400 038.)
4.The Deputy Commissioner of)
Customs, Central Revenue)
Recovery Cell, New Customs)
House, Ballard Estate,)
Mumbai-400 038)..Respondents

Mr.V.Sridharan with Mr. Prakash Shah and Mr.G. Jain i/b.
DSK Legal for the Petitioners.

Mr. S.M.Shah with Mr. P.S. Jetley, Mr. A.S.Rao and Mr.
Y.R.Mishra for Respondents.

CORAM : F.I. REBELLO &

R.M.SAVANT, JJ.

DATED : 12TH APRIL, 2007.

JUDGMENT (PER F.I. REBELLO, J.)

. These Petitions were specially assigned to this Bench by order dated 11th December, 2006 and are being disposed of by this common judgment.

2. A show cause notice came to be issued to L.D.Textile Industries Ltd., the petitioner in Writ Petition No.813 of 2001 alleging serious violation of conditions imposed under an advance licence obtained by them from the Government in

or around 1984. After giving an opportunity, the Additional Chief Controller of Imports and Exports passed an order dated 14th November, 1986 in exercise of the powers conferred by Clause 8(1) of the Imports (Control) Order 1985 adverse to L.D. Textile Industries Ltd. The relevant portion of the order is paragraph 10, which reads as under:-

"10. From the foregoing facts and on the basis of evidence collected during the inspection of the unit, and thereafter , the charges against the licensee firm as indicated in the show cause notice have been amply proved. It is further clear that the firm has no rebuttal evidence to adduce. In view of the above position, in exercise of the powers vested in me under Section 4-K of the Imports & Exports (Control) Act, 1947, (hereinafter referred to as the 1947 Act) I hereby levy a penalty of Rs.75 lakhs for misutilisation of the imported material in contravention of the provisions of Section 4-I(1)(a) of the said Act and further debar the firm and its Directors from making imports and receiving import licence/CCPs and receiving any imported material from STC/M&MTC or any other canalizing agency and also from importing any material, machinery, etc. under OGL for 15 licensing periods from AM 1986 to AM 2000 for violation of the provisions of Clause 8(1)(b)(c)(f) and (h) of the imports (Control) Order, 1955.

. L.D. Textiles preferred a statutory appeal which was rejected by the Appellate Committee Cell, Government of India, Ministry of Commerce, New Delhi by order dated 14th January, 1992. Against that order L.D. Textile Industries Limited have preferred Writ Petition bearing Writ Petition No.680 of 1992 before the High Court of Delhi. According to the petitioners the petition was admitted on 11th November, 1993 and is pending for final disposal.

3. Petitioner Obron Impex (Private) Limited in Writ Petition No.811 of 2001 was incorporated as a Private Limited Company under the Indian Companies Act, 1956 on 25th June, 1995. Obron filed seven bills of entry between August to October, 1997 for clearance of a total of 504 metric tons of polyester staple fibre imported by it. The Commissioner of Customs (Imports) Mumbai on 19th May, 1998 issued a show cause notice to Obron alleging that it was a dummy and front company of L.D. Textile and that all the imports in question were not imports of Obron, but imports of L.D. Textile. The Show cause notice set out that the entire attempt was to side step the order of the Department dated 14th November, 1986 passed against L.D. Textile and its Directors. The noticee were informed that the Authority proposed to confiscate the goods under Section 111(d) of the Customs Act, 1962 on the ground that the imports were in reality made by L.D. Textile and, therefore, the imports violated the debarment order dated 14th November, 1986. It

sought to impose consequential penalties on the two companies and Directors specified in the notice.

. Relying on the evidence on record the Commissioner of Customs (Import) Mumbai concluded that in reality the import was made by L.D. Textiles and not by Obron. Accordingly by order dated 4th December, 1998 the goods were confiscated under Section 111(d) of the Customs Act, 1962. The order also imposed consequential penalties under Section 112(a) and 112(b) of the Customs Act, 1962 as detailed in the order. All the parties preferred Appeals to CEGAT. By order dated 9th March, 2000, CEGAT upheld the conclusion of the learned Commissioner and upheld the order of confiscation under Section 111 (d) of the Customs Act, 1962. The redemption fine of Rs.15,00,000/- was also upheld. It however, set aside the penalty on Obron on the ground that it being a dummy is not liable to penalty. The penalty of Rs.25.00 lakhs imposed on L.D. Textile was entirely upheld. The penalty on the Directors was reduced.

4. Obron, L.D. Textiles, V.K. Mehra and T.R. Mehra filed Application before the CEGAT for rectification of mistake, as a mistake apparent on the record under Section 129C(2) of the Customs Act, 1962. Before CEGAT it was sought to be contended that the Imports and Exports (Control) Act, 1947 as also the Import Control Order 1955 had been repealed and a new enactment known as Foreign Trade (Development & Regulation) Act 1992 (hereinafter referred to

as the F.T.D.R. Act) had come into force by repealing the Imports and Exports (Control Act, 1947. It was also submitted that Section 111(d) of the Customs Act conferred power to confiscate prohibited goods under the provisions of the Customs Act, 1962 and under any other law for the time being in force. An order passed by a functionary under the provisions of an Act, which has ceased to exist, could not be the basis for an order of confiscation under Section 111(2) of the Customs Act. On a specific query on behalf of the Appellants it was conceded that the point was not argued before the Tribunal when the Tribunal passed the impugned order. It was however, contended that upholding of the order of confiscation was an error made by the Tribunal which is apparent on the record. The learned Members of the Tribunal, however, noted that in so far as the contention that the prohibition imposed would cease to exist, on the coming into force of the new Act, relied on, Section 20 of the F.T.D.R. Act, 1992 to hold that the order was saved and consequently rejected that contention. The argument that Section 111(d) of the Customs Act was not attracted also was rejected, for reasons set out in the order. The Appellate Tribunal then was pleased to hold that no mistake was committed by the Tribunal in appreciating the purport of the order passed by the Additional Chief Controller of Imports and Exports and that the grounds on which mistake is now alleged to have been occurred were not brought to the notice of the Tribunal. The learned tribunal on these grounds held the rectification applications as not maintainable and

dismissed the same.

5. Apart from these Writ Petitions, the petitioners had also filed applications before this Court under Section 130A of the Customs Act for a direction to CEGAT to refer the question of law framed in the Application. As the petitions were filed subsequently and considering the issues of law raised in the writ petitions, wherein the very jurisdiction of the authorities was disputed after hearing the parties and with no objection from the Respondents we allowed the petitioners herein to withdraw the said applications, in order to pursue the present petitions.

6. At the hearing of this petition on behalf of the petitioners their learned Counsel has made the following propositions:-

(a) Whether the order dated 14th November, 1986 made under the 1947 Act, read with Import (Control) Order 1985 operates against petitioner L.D. Textile or Obron Implex Pvt. Ltd. for imports made in August, 1997 under the Export and Import Policy of 1st April, 1997 - 31st March, 2002 under the F.T.D.R. Act, 1992.

(b) Section 111(d) of the Customs Act provides which goods are liable to be confiscated. It is only when goods are imported contrary to any prohibition

imposed by or under the Act or any other law for the time being in force can an order of confiscation be passed, considering the definition of prohibited goods under Section 2(33) of the Customs Act. In other words it is submitted that there must be a prohibition on the import or export of goods and not prohibition on the importer, to attract the provisions of Section 111(d) of the Customs Act. In the instant case considering the FTDR Act, 1992 and the Import and Export Policy 1997-2002 there was no prohibition on import of the confiscated goods and

consequently the order is without jurisdiction.

(c) It is next submitted that judgment of 14th November, 1986 passed by the Additional Chief Controller of Imports and Exports is not 'law' within the meaning of Section 2(33) of the Customs Act. The goods imported were, therefore, not prohibited goods to attract Section 112(d) of the Customs Act. For contravention of an order passed under the Imports (Control) Order 1955, action could have been taken under Section 5-A of the Import and Exports (Control) Act, 1947. Consequent to its repeal and there be no corresponding law, the impugned order is liable to be set aside.

. On behalf of the respondents, learned Counsel submits that once an order has been passed under the Import Control Order of 1985, it was within the jurisdiction of the Respondent No.2 to pass the order under the Customs Act and consequently the order cannot be faulted. It is next submitted that the order passed under the Import & Exports (Control) Act, 1947 read with Imports (Control) Order 1955 considering the provisions of Section 20 of the FTDR Act, would be saved and consequently it was open to the Respondents to have passed the order. The impugned order, it is, therefore, submitted, is within jurisdiction.

7. In the light of the propositions advanced, we shall first consider the first submission of the petitioners. Under the Act of 1947 and in terms of Clause 7 of the Imports (Control) Order 1955, an Authorised Officer may debar a licensee or importer or any other person from permitting import of any goods for a specified period under the Order if prohibited goods were imported. Apart from that, the importer could also be prosecuted under Section 5A of the Act of 1947. Section 5A of the 1947 Act read as under:-

"5A. Penalty for contravention of order made by Adjudicating Authority and Appellate Authority: If any person fails to pay the penalty imposed by the adjudicating or the Appellate authority or fails to comply with any direction or order made, or deemed to

have been made, under this Act, he shall, upon conviction by a court, be punishable with imprisonment for a term which may extend to two years or with fine or with both."

The expression 'under this Act' would include an 'order' under the Import (Control) Order 1955. Under Section 3 of the Act of 1947, it was open to the Central Government to make provisions for prohibiting, restricting or otherwise controlling any of the goods or specified class of goods and subject to such exceptions, to import or export of goods in India or out of India. All goods to which an order made under Section 3(1) of the Act of 1947 applied, were deemed to be goods of which the import or export has been prohibited under Section 11 of the Customs Act. The order imposing the ban on L.D. Textile was made on 14th November, 1986 and confirmed in appeal on 14th January, 1992 now the subject matter of a Writ Petition before the Delhi High Court. The Act of 1947 came to be repealed by the FTDR Act of 1992. Section 4 of the FTDR Act provides for saving of orders set out therein. Section 4 reads as under:-

"4. All Orders made under the Imports and Exports (Control) Act, 1947 (18 of 1947), and in force immediately before the commencement of this Act shall, so far as they are not inconsistent with the provisions of this Act, continue to be in force and shall be deemed to have been made under this Act."

The expression 'order' is defined under Section 2(h) to mean an order made by the Central Government under Section 3 of the Act. Section 3 provides for making of "orders" which are subordinate legislation and not judicial or quasi judicial orders. Under Section 5, it was open to the Central Government to formulate and announce an Export and Import policy. We may now gainfully reproduce Section 20 of the F.T.D.R. Act, which reads as under:-

"20. (1) The imports and Exports (Control) Act, 1947 (18 of 1947) and the Foreign Trade (Development and Regulation) Ordinance, 1992 (Ordinance 11 of 1992) are hereby repealed.

(2) The repeal of the Imports and exports (Control) Act, 1947 (18 of 1947) shall however, not affect, --

(a) the previous operation of the Act so repealed or anything duly done or suffered thereunder, or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the Act so repealed; or

(c) any penalty, confiscation or punishment incurred in respect of any contravention under the Act so repealed; or

(d) any proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, confiscation or punishment as aforesaid,

and any such proceeding or remedy may be instituted, continued or enforced, and any such penalty, confiscation or punishment may be imposed or made as if that Act had not been repealed.

(3) Notwithstanding the repeal of the Foreign Trade (Development and regulation) Ordinance, 1992 (Ordinance 11 of 1992) anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act."

. By virtue of Section 1 of the F.T.D.R. Act, Sections 11 to 14 came into force at once and the remaining provisions were deemed to have come into force on 19th June, 1992. In exercise of the power conferred under Section 3 read with Section 4 of the F.T.D.R. Act, the Foreign Trade (Exemption from Application of Rules in Certain Cases) Order, 1993 came to be made in supersession of the Imports (Control) Order, 1955 and the Exports (Control) Order, 1988, except in respect of things done or omitted to be done before such supersession. The Export & Import Policy from 1st April, 1997 - 31st March, 2002 was notified. There is

no dispute that pursuant to the FTDR Act and the policy notified thereunder there was no ban in importing the goods in respect of which the impugned order has been passed. The question is whether Section 20 of the FTDR Act saves the operation of the quasi judicial order, which was passed in the year 1986.

8. Before dealing with the controversy, we may advert to some facts and events. On 31st March, 1992 a Press Statement was released to the effect that in the new Act to be introduced only provision relating to fiscal penalty, cancellation of license and confiscation of goods will be retained. The FTDR Act came to be enacted on 17th August, 1992. On 30th December, 1993 Rules were framed known as Foreign Trade (Regulations) Rules 1993 and on 31st December, 1993 the order of 1993 came to be made. On 1st April, 1997 the Export Import Policy (EXIM Policy) for the period 1997-2002 was issued by the Central Government in exercise of the powers conferred by Section 5 of the FTDR Act. Para.4.1 of the said Policy reads as under:-

"4.1 Exports and Imports shall be free, except to the extent they are regulated by the provisions of this Policy or any other law for the time being in force. The itemwise export and import policy shall be, as stated in columns 3 to 5 of the book, titled "ITC (HS) Classifications of Export and Import Items: published and notified by the Director General of

Foreign Trade and as amended from time to time."

The Import Trade Control Harmonised System Code, vide Heading No.550320.00, provided that polyester staple fibre, the item in question, is freely importable without any restriction whatsoever by anybody for any purpose. In view of that the goods could be imported by any person and similarly purchased by any person.

9. An analysis of the provisions of the Act of 1947 and the Import Control Order of 1955, would show that there was power, apart from imposing penalty by way of fine also for prosecution and conviction for a term punishable with imprisonment which could extend upto two years or with fine or both. Under the FTDR Act 1992, the provisions pertaining to prosecution have been omitted. The Act provides for search, seizure, penalty by way of fine which can be recovered as arrears of land revenue. Section 12 which is relevant, reads as under:-

"12. No penalty imposed or confiscation made under this Act shall prevent the imposition of any other punishment to which the person affected thereby is liable under any other law for the time being in force."

It would, therefore, be clear that if the person was liable under any other law then irrespective of the provisions of

the F.T.D.R. Act, the persons could also be punished under the other law. In so far as repealing provision is concerned any penalty, confiscation or punishment incurred in respect of any contravention of the Act so repealed was saved to the extent there was a bar on import and if a license was required.

. In that context we may consider the argument, whether in the absence of any provision similar to the provisions under the Act of 1947, was it open to the Respondents to take action for violation of the order of 1986. To answer the issue, gainful reference may be made to the judgment of the Supreme Court in the case of **Kolhapur Canesugar Works Ltd. & Another vs. Union of India & Ors., (2000) 2 SCC 536**. The Appellant M/s.Kolhapur Canesugar Works Ltd., was registered as a subsidiary of the holding company in the year 1972. The holding company bifurcated its activities, whereby the activity pertaining to manufacture and sale of sugar was transferred to the Appellant Company. It is not necessary to refer to other aspects. The Appellants were informed that since a fresh L-4 licence was issued to them, their factory would have to be treated as a new unit and, therefore, the rebate could not be entertained. A show cause notice was served which was replied to. Before the order could be passed the then existing Rules, were omitted and new a provision was introduced. The effect of such deletion and introduction of a new provision was that the old Rules under which the show-cause notice was issued

ceased to exist. It was contended that such further proceedings, were without jurisdiction as the Notification did not contain any saving clause. Considering the submissions made and the importance of the question the matter was referred for consideration by a Constitution Bench. The issue for consideration was whether the proceedings could be continued in law after omission of the old Rule and substitution of new Rule. After considering the various provisions as also Section 6 of the General Clauses Act, the Supreme Court was pleased to observe as under:-

"It is not correct to say that in considering the question of maintainability of pending proceedings initiated under a particular provision of the rule after the said provision was omitted, the Court is not to look for a provision in the newly-added rule for continuing the pending proceedings. It is also not correct to say that the test is whether there is any provision in the rules to the effect that pending proceedings will lapse on omission of the rule under which the notice was issued. It is our considered view that in such a case the court is to look to the provision in the rule which has been introduced after omission of the previous rule to determine whether pending proceedings will continue or lapse. If there is a provision therein that pending proceedings shall continue and be disposed of under the old rule as if

the rule has not been deleted or omitted then such proceedings will continue. If the case is covered by Section 6 of the General Clauses Act or there is a pari materia provision in the statute under which the rule has been framed, in that case also the pending proceedings will not be affected by omission of the rule. In the absence of any such provision in the statute or in the rule the pending proceedings would lapse on the rule under which the notice was issued or proceedings were initiated being deleted/omitted."

The Constitution Bench judgment was considered by the Supreme Court in **General Finance Company & Anr. vs. Assistant Commissioner of Income Tax, Punjab, (2002) 7 SCC 1**. The Court observed as under:-

"9. Net result of this discussion is that the view taken by the High Court is not consistent with what has been stated by this Court in the two decisions aforesaid and the principle underlying Section 6 of the General Clauses Act as saving the right to initiate proceedings for liabilities incurred during currency of the Act will not apply to omission of a provision in an Act but only to repeal, omission being different from repeal as held in the aforesaid decisions. In the Income Tax Act, Section 276-DD stood omitted from the Act but not repealed and hence, a prosecution could not have been launched or

continued by invoking Section 6 of the General Clauses Act after its omission."

. From the law as declared, it would be clear that what the Court must consider are the provisions of the Act or Rule after the omission, to determine whether pending proceedings will continue or lapse. In the instant case we are not really concerned with pending proceedings, but whether an order passed under the Act of 1947 in the absence of similar provisions in the FTDR Act 1992, would be saved and applicable to import of goods in respect of which no license is required. In the instant case the Act of 1947 has been repealed by the FTDR Act, 1992. Though there is a saving provision it is of no consequence, as there is an omission, in so far as requiring a license for import and on failure to have a license a provision for prosecution. Even if the order dated 14th November, 1986 is saved, in the absence of any provision in F.T.D.R. Act making the import illegal or liable for confiscation or prosecution for failure to comply with that order, the order cannot be enforced. It would thus be clear that on a consideration of the provisions of the Act of 1992, that unlike in the Act of 1947, there is no provision making the import illegal and liable for prosecution or confiscation of goods. In other words there is an omission. Consequently, it would not be within the the jurisdiction of the respondents to pass any order like the one impugned. We are clearly, therefore, of the opinion that the action of the respondent is without

jurisdiction and consequently liable to be quashed and set aside.

10. We now proceed to answer the next two submissions as the arguments are common. The question is, whether it was open to the Respondents, to have exercised jurisdiction under Section 111(d) of the Customs Act to pass the impugned order. Exercise of jurisdiction under Section 111(d) would arise, if the goods are imported or brought within the Indian customs waters, contrary to any prohibition imposed by or under this Act or any other law for the time being in force. We may gainfully reproduce Section 111(d) which reads as under:-

"11. Confiscation of improperly imported goods, etc.-- The following goods brought from a place outside India shall be liable to confiscation:-

(a)

(b)

(c)

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any

other law for the time being in force."

Similarly, we may reproduce the definition of "prohibited goods" under Section 2(33) which reads as under:-

"2.(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with."

It was open to the Government to have prohibited the import of goods by virtue of power conferred under Section 11 of the Customs Act. In respect of the goods which are the subject matter there is no order of prohibition.

. A co-joint reading of the two provisions would show that the prohibition must be in respect of any prohibition under the Customs Act. or any other law for the time being in force. Under the Indian Customs Act there was no prohibition imposed on the goods which were imported. The order under the Repealed Act was an order on the importer/license holder not to import the goods as at the relevant time the goods in issue could be imported only under a licence. Under the F.T.D.R. Act and the Import Policy of 1992-2002, the goods could be imported by any

person including L.D.Textiles subject to what we may hereinafter discuss. The only question is, whether the order of 1986 would be a law for the time being in force to treat the goods as prohibited goods. Law has not been defined either under the Act of 1947 or FTDR Act of 1992. In General Clauses Act, however, Indian Law has been defined under Section 3(29) to mean as under:-

"3(29) "Indian law" shall mean any Act, Ordinance, Regulation, rule, order, bye-law or other instrument which before the commencement of the Constitution had the force of law in any Province of India or part thereof, or thereafter has the force of law in any Part A State or Part C State or Part thereof, but does not include any Act of Parliament of the United Kingdom or any Order in Council, rule or other instrument made under such Act."

Enactment has been defined under Section 3(19) and reads as under:-

"3(19) "enactment" shall include a Regulation (as hereinafter defined) and any Regulation of the Bengal, Madras or Bombay Code, and shall also include any provision contained in any Act or in any such Regulation as aforesaid."

A consideration of the expressions, Indian Law and enactment

would indicate that what is referred to there is plenary legislation as also an exercise in subordinate legislation. These expressions would not encompass an 'order' of a judicial or a quasi judicial authority including of a Tribunal. It would, therefore, be clear that the order of 14th November, 1986 passed by the quasi judicial authority/Tribunal would not be Indian Law or enactment and consequently the provisions of Section 111(d) of the Customs Act would not be attracted. The prohibition had to be under the Customs Act or any other law for the time being in force. The import of goods were not prohibited. They are only subject to Customs duties, nor is there any law in force prohibiting the import of goods. The order under the 1986 Act, could have been enforced if say, Section 5A of the Act of 1947 was saved or a similar provision like Section 5A was there in the F.T.D.R. Act, 1992 making punishable acts, which are in violation of any order made under the Act of 1947 or rules or policy made thereunder. The prohibition under the order of 1986 on L.D. Textiles, was so long as a license was required for importing the goods. In other words Obron Impex (P) Limited or L.D. Textiles ;under the Import or Export Policy of 19897-2002 could have imported the goods, even considering the findings by the Respondents, that the company is nothing but another incarnation of L.D. Textiles on lifting the corporate veil as long as a licence was not required for its import. In our opinion it is not possible to hold that the respondents had jurisdiction to pass the impugned order. The impugned order, therefore, is

clearly without jurisdiction and hence illegal, null and void.

11. For the aforesaid reasons in our opinion all these petitions will have to be allowed and consequently Rule will have to be made absolute in terms of prayer clause (a) in each of the petitions. Order accordingly. In the circumstances of the case there shall be no order as to costs.

(R.M. SAVANT, J.)

(F.I.REBELLO, J)